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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,822	01/08/2002	Fung-Jou Chen	13,042.4	9638

23556 7590 03/26/2004

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/042,822

Applicant(s)

CHEN ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36,37 and 40-48 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 36,37 and 40-48 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892).
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 36, 40-43, and 45-47 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5, 8, and 11-13 of U.S. Patent No. 5990377. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application does not

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claim the hydrophilic basesheet has a Wet Compressed Bulk of about 5 or greater. However, col. 3, line 25 through col. 9, line 5 of the reference sets forth materials capable of being vapor permeable. The present application teaches similar materials for the base sheet, (pages 36-38). Thus, present application obviously includes a base sheet capable of having the claimed Wet Compressed Bulk. When the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980).

Specification

3. Applicant is reminded of the proper format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 36, 37, 40-42, 44, 45, and 47 are rejected under 35 U.S.C. 102(e) as being anticipated by Ahr et al. USPN 5763044.

As to claim 36, Ahr discloses a method for producing an absorbent web having a dry feel when wet (Abstract) comprising the steps of: preparing an inherently hydrophilic basesheet comprising papermaking fibers (col. 6, lines 40-45) and having an upper surface and a lower surface, the upper surface having elevated and depressed regions (Figure 7); and depositing hydrophobic matter (col. 5, lines 63-65) preferentially on the elevated regions of the upper surface of the base sheet (Figure 7).

As to claim 37, Ahr incorporates by reference (col. 4, lines 49-55) Benz USPN 3881987 who discloses a method of making an apertured topsheet involving the steps of depositing an aqueous slurry of cellulosic fibers on a foraminous web to produce an embryonic web; molding the web on a three-dimensional substrate; and drying the web (Ahr col. 4, lines 49-66 and Benz col. 11, line 56 through col. 14, line 8).

As to claim 40, Ahr discloses the base sheet is wetlaid (col. 4, lines 34-36).

As to claim 41, Ahr discloses the base sheet is airlaid (col. 4, lines 27-29).

As to claim 42, see Figure 7, the hydrophobic matter comprises fibrils **54**.

As to claim 44, see Figure 7, the hydrophobic matter comprises fibrils **54**, which extend into the apertures of basesheet **52**.

As to claim 45, Ahr discloses 9-400 apertures per square inch (the number of apertures corresponds to the number of protrusions per square inch), which is included in the range of 5-300 protrusions per square inch (col. 5, lines 4-6). Ahr incorporates by reference (col. 4, lines 49-55) Benz USPN 3881987 who discloses the height of the apertures is .254-1.01 mm (col. 9, lines 6-10 Benz discloses area and diameter of apertures, from which the examiner calculated the height).

As to claim 47, see Figure 7.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 43, 46, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahr USPN 5763044.

As to claims 43 and 46, Ahr does not disclose the exact amount of hydrophobic matter attached to the upper surface or the Rewet value. It is evident that Ahr has a value for this characteristic. Ahr recognizes that the choice of fibril length and fibril density (amount attached to the surface) can be varied and this will affect the rewet characteristics (col. 5, lines 59-60). Ahr, therefore recognizes the Rewet value is a result effective variable of fibril length and density. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Ahr with the claimed amount of synthetic fibers attached to the upper surface and the

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claimed Rewet value, since discovering an optimum value of a result effective variable involves only routine skill in the art.

As to claim 48, Ahr discloses the basis weight of the base sheet is .058-14.6 g/m² (col. 10, lines 31-32), which is included in the range of from about 10-70 gsm. Ahr is silent on the basis weight of the hydrophobic matter. It is evident that Ahr has a value for this characteristic. Ahr recognizes that the choice of fibril length and fibril density, which is affected by the fibril basis weight, can be varied and this will affect the rewet characteristics (col. 5, lines 59-60). Ahr, therefore recognizes the function of the topsheet in terms of rewet, acquisition, and tactile feel is a result effective variable of fibril length and density. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Ahr with the claimed basis weight of the hydrophobic matter, since discovering an optimum value of a result effective variable involves only routine skill in the art.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Butterworth et al. USPN 3967623 and Thomas USPN 6242074 are cited to show hydrophobic fibers on the surface of an apertured topsheet useful in absorbent articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703)305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Examiner
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March 21, 2004